UNITED STATES PATENT AND TRADEMARK OFFICE

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EXAMINER
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ART UNIT	PAPER NUMBER
2155	

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Please find below and/or attached an Office communication concerning this application or proceeding.

	Application No.	Applicant(s)
Office Action Summary	10/034,572	BALASURIYA, SENAKA
	Examiner	Art Unit	
	David Lazaro	2155	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on <u>30 September 2005</u>.

2a) ☒ This action is **FINAL**.   2b) ☐ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) *1-8,10-13,15-18 and 20* is/are pending in the application.

   4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) *1-8, 10-13, 15-18 and 20* is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.

   Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

   Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

   a) ☐ All   b) ☐ Some * c) ☐ None of:

   1. ☐ Certified copies of the priority documents have been received.

   2. ☐ Certified copies of the priority documents have been received in Application No. _____.

   3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

   * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
   Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413)
   Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

1.   This office action is in response to the amendment filed 09/30/2005.

2.   Claims 1, 2, 3, 11, 12, 15 and 16 were amended.

3.   Claims 9, 14 and 19 are canceled.

4.   Claims 1-8, 10-13, 15-18 and 20 are pending in this office action.

Response to Amendment

5.   Applicant's arguments filed 09/30/2005 have been fully considered but they are

not persuasive. See Response to Arguments.

6.   The objections to claims 12-13 are withdrawn.

7.   The objections to claims 16-18 are withdrawn.

8.   Applicant's amendment necessitated the new ground(s) of rejection presented in

this Office action.

Claim Rejections - 35 USC § 112

9.   The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly
> claiming the subject matter which the applicant regards as his invention.

10.   Claims 1, 11 and 15 are rejected under 35 U.S.C. 112, second paragraph, as

being indefinite for failing to particularly point out and distinctly claim the subject matter

which applicant regards as the invention.

11.   Claims 1, 11 and 15 each recite the limitation "the ambient condition threshold

data". There is insufficient antecedent basis for this limitation in the claims.

Claim Rejections - 35 USC § 103

12.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

13.   Claims 1-8, 10-13, 15-18 and 20 rejected under 35 U.S.C. 103(a) as being

unpatentable over U.S. Provisional Application 60/213562 by Rudder et al. filed on June

22, 2000 (hereinafter Rudder), in view of U.S. Patent 5,479,476 by Finke-Anlauff

(hereinafter Finke) and U.S. Patent 5,983,186 by Miyazawa et al. (hereinafter

Miyazawa).

14.   With respect to Claim 1, Rudder teaches a multimodal communication method

comprising;

accessing a multimodal profile that contains at least multimodal preference

information associated with at least one input modality and at least one output modality

and multimodal preference information (Page 34, 2nd and 3rd paragraphs); and

configuring at least one multimodal communication apparatus for a multimodal

communication session based on the accessed multimodal preference information

(Page 33, last paragraph; Page 34, starting at the 2nd paragraph to Page 35).

Rudder further teaches multimodal input and output settings may be selected

based on the user's state and context as well as conditions of the apparatus being used

(Page 33, last paragraph; Page 34, starting at the 2nd paragraph to Page 35; and Page

38 2nd paragraph).

Rudder does not explicitly disclose the use of an identifier associated with the

multimodal preference information. Finke teaches a similar method of using a profile to

configure a communication apparatus (Col. 1 line 61 - Col. 2 line 12). The teachings of

Finke include the use of an identifier that is associated with both input and output

preference information (Col. 3 line 57 - Col. 4 line 12 and Col. 5 lines 3-67, also see Fig.

3). This allows a user to easily select a mode of operation associated with an identifier

based on the particular situation of the user (Col. 5 lines 63-67).

Rudder does not explicitly disclose detecting an ambient condition level

associated with the multimodal communication apparatus, comparing the ambient

condition level to the ambient condition threshold data; and selecting a multimodal input

and output setting for the multimodal communication apparatus based on the

comparison. Miyazawa teaches the use of ambient condition threshold data associated

with operational settings (Col. 5 lines 8-49). Ambient threshold data is compared with a

detected ambient condition level (Col. 12 line 62 - Col. 13 line 23). Selection of settings

for the apparatus is based on the comparison of the ambient threshold data and the

detected ambient condition level (Col. 12 line 62 - Col. 13 line 23). This allows for

improved interaction by, for example, making it easier to hear even when ambient noise

is present (Col. 13 lines 18-22).

It would have been obvious to one of ordinary skill in the art at the time the

invention was made to take the method disclosed by Rudder modify it as indicated by

Finke and Miyazawa such that the method further comprises an identifier associated

with the multimodal preference information; and detecting an ambient condition level

associated with the multimodal communication apparatus, comparing the ambient

condition level to the ambient condition threshold data; and selecting a multimodal input

and output setting for the multimodal communication apparatus based on the

comparison. One would be motivated to incorporate the teachings of Finke, as there is

need for facilitating a users adjustment of operating characteristics in order to get the

best performance appropriate to a current situation (In Finke: Col. 1 lines 46-58 and Col.

5 lines 63-67). One would be motivated to incorporate the teachings of Miyazawa, as

there is need for systems and methods that facilitate greater and more consistent user

interaction (In Rudder: Page 5).

15.   With respect to Claim 2, Rudder in view of Finke and Miyazawa teaches all the

limitations of Claim 1 and further teaches wherein configuring the at least one

multimodal communication apparatus for the multimodal communication session based

on the accessed multimodal preference information includes using the at least one

identifier to select one of a plurality of stored multimodal preferences from a multimodal

profile (In Finke: Col. 3 line 57 - Col. 4 line 12 and Col. 5 lines 3-67, also see Fig. 3).

16.   With respect to Claim 3, Rudder in view of Finke and Miyazawa teaches all the

limitations of Claim 2 and further teaches configuring at least one multimodal server for

a multimodal communication session based on the selected multimodal preference

information (In Rudder: Page 34, starting at the 2nd paragraph to Page 35).

17.   With respect to Claim 4, Rudder in view of Finke and Miyazawa teaches all the

limitations of Claim 1 and further teaches storing a plurality of multimodal preferences

for a plurality of different modalities to create a multimodal profile (In Rudder: Page 33,

last paragraph; Page 34, starting at the 2nd paragraph to Page 35) *and* (In Finke: Col. 3

line 57 - Col. 4 line 12 and Col. 5 lines 3-67, also see Fig. 3).

18.   With respect to Claim 5, Rudder in view of Finke and Miyazawa teaches all the

limitations of Claim 1 and further teaches creating at least one multimodal profile by:

presenting a user interface that receives input and output modality preference data to

define differing multimodal preference information for a plurality of multimodal

communication scenarios (In Rudder: Page 33, last paragraph; Page 34, starting at the

2nd paragraph to Page 35; Page 37, last paragraph to Page 38 2nd paragraph)

associated with a plurality of identifiers (In Finke: Col. 5 lines 3-67).

19.   With respect to Claim 6, Rudder in view of Finke and Miyazawa teaches all the

limitations of Claim 1 and further teaches the identifier associated with the multimodal

preference information represents an environmental situation associated with a

multimodal communication (In Finke: Col. 3 line 57 - Col. 4 line 12 and Col. 5 lines 3-67,

also see Fig. 3).

20.   With respect to Claim 7, Rudder in view of Finke and Miyazawa teaches all the

limitations of Claim 1 and further teaches wherein the multimodal preference information

includes ambient condition threshold data (In Miyazawa: Col. 12 line 62 - Col. 13 line

23) associated with at least one identifier (In Rudder: Page 33, last paragraph; Page 34,

starting at the 2nd paragraph to Page 35; and Page 38 2nd paragraph).

21.   With respect to Claim 8, Rudder in view of Finke and Miyazawa teaches all the

limitations of Claim 5 and further teaches wherein the multimodal preference information

includes at least one of; session preference information, media preference information

including format identifiers to facilitate control of a format of information sent or received during the multimodal communication, and input output modality preference data (In Rudder: Page 33, last paragraph; Page 34, starting at the 2nd paragraph to Page 35; Page 37, last paragraph to Page 38 2nd paragraph).

22.   With respect to Claim 10, Rudder in view of Finke and Miyazawa teaches all the limitations of Claim 1 and further teaches wherein available multimodal preference information is based on operational capabilities of at least one of: multimodal communication apparatus capabilities, communication network capabilities, ambient conditions, a server that is accessed by the multimodal communication apparatus and a service accessed by the multimodal communication apparatus (In Rudder: Page 33, last paragraph; Page 34, starting at the 2nd paragraph to Page 35; Page 37, last paragraph to Page 38 2nd paragraph).

23.   With respect to Claim 11, Rudder teaches a multimodal communication apparatus comprising:

a multimodal profile generator operative to access a multimodal profile that contains at least one of multimodal preference information associated with at least one input modality and at least one output modality and multimodal preference information (Page 34, 2nd and 3rd paragraphs); and

a multimodal communication apparatus configuration controller, operatively responsive to accessed multimodal preference information, to configure a multimodal communication apparatus for a multimodal communication session based on the

accessed multimodal preference information (Page 33, last paragraph; Page 34, starting at the 2nd paragraph to Page 35).

Rudder further teaches multimodal input and output settings may be selected based on the user's state and context as well as conditions of the apparatus being used (Page 33, last paragraph; Page 34, starting at the 2nd paragraph to Page 35; and Page 38 2nd paragraph).

Rudder does not explicitly disclose the use of an identifier associated with the multimodal preference information. Finke teaches a similar method of using a profile to configure a communication apparatus (Col. 1 line 61 - Col. 2 line 12). The teachings of Finke include the use of an identifier that is associated with both input and output preference information (Col. 3 line 57 - Col. 4 line 12 and Col. 5 lines 3-67, also see Fig. 3). This allows a user to easily select a mode of operation associated with an identifier based on the particular situation of the user (Col. 5 lines 63-67).

Rudder does not explicitly disclose the multimodal communication apparatus configuration controller detects an ambient condition level associated with the multimodal communication apparatus, compares the ambient condition level to the ambient condition threshold data; and makes the selection of settings based on this comparison. Miyazawa teaches the use of ambient condition threshold data associated with operational settings (Col. 5 lines 8-49). Ambient threshold data is compared with a detected ambient condition level (Col. 12 line 62 - Col. 13 line 23). Selection of settings for the apparatus is based on the comparison of the ambient threshold data and the detected ambient condition level (Col. 12 line 62 - Col. 13 line 23). This allows for

improved interaction by, for example, making it easier to hear even when ambient noise

is present (Col. 13 lines 18-22).

It would have been obvious to one of ordinary skill in the art at the time the

invention was made to take the apparatus disclosed by Rudder modify it as indicated by

Finke and Miyazawa such that the apparatus further comprises an identifier associated

with the multimodal preference information; and wherein the multimodal communication

apparatus configuration controller detects an ambient condition level associated with the

multimodal communication apparatus, compares the ambient condition level to the

ambient condition threshold data; and selects a multimodal input and output setting for

the multimodal communication apparatus based on the comparison. One would be

motivated to incorporate the teachings of Finke, as there is need for facilitating a users

adjustment of operating characteristics in order to get the best performance appropriate

to a current situation (In Finke: Col. 1 lines 46-58 and Col. 5 lines 63-67). One would be

motivated to incorporate the teachings of Miyazawa, as there is need for systems and

methods that facilitate greater and more consistent user interaction (In Rudder: Page 5).

24.   With respect to Claim 12, Rudder in view of Finke and Miyazawa teaches all the

limitations of Claim 11 and further teaches

a user interface, operatively coupled to the multimodal profile generator, that

receives input and output modality preference data to define differing multimodal

preference information for a plurality of multimodal communication scenarios (In

Rudder: Page 33, last paragraph; Page 34, starting at the 2nd paragraph to Page 35;

Page 37, last paragraph to Page 38 2nd paragraph) associated with a plurality of

identifiers (In Finke: Col. 5 lines 3-67); and

memory, operatively coupled to the multimodal profile generator, that stores

received input and output modality preference data and an associated identifier that has

been associated with at least a pair of received input and output modality preference

data, as part of the multimodal profile (In Rudder: Page 33, last paragraph; Page 34,

starting at the 2nd paragraph to Page 35; Page 37, last paragraph to Page 38 2nd

paragraph) and (In Finke: Col. 5 lines 3-67).

25.   With respect to Claim 13, Rudder teaches all the limitations of Claim 12 and

further teaches wherein the multimodal communication apparatus configuration

controller configures the multimodal communication apparatus for the multimodal

communication session based on the accessed multimodal preference information

using the at least one identifier to select one of a plurality of stored multimodal

preferences from a multimodal profile (In Finke: Col. 3 line 57 - Col. 4 line 12 and Col. 5

lines 3-67, also see Fig. 3 of Finke).

26.   With respect to Claim 15, Rudder teaches a multimodal communication system

comprising:

(a) a multimodal communication apparatus having:

a multimodal profile generator operative to access a multimodal profile that

contains at least one of multimodal preference information associated with at least one

input modality and at least one output modality and multimodal preference information

(Page 34, 2nd and 3rd paragraphs); and

a multimodal communication apparatus configuration controller, operatively

responsive to accessed multimodal preference information, to configure a multimodal

communication apparatus for a multimodal communication session based on the

accessed multimodal preference information (Page 33, last paragraph; Page 34,

starting at the 2nd paragraph to Page 35); and

(b) a multimodal network element, operatively coupled to the multimodal

communication apparatus, to provide information during a session with the multimodal

communication apparatus (Page 34, starting at the 2nd paragraph to Page 35).

Rudder further teaches multimodal input and output settings may be selected

based on the user's state and context as well as conditions of the apparatus being used

(Page 33, last paragraph; Page 34, starting at the 2nd paragraph to Page 35; and Page

38 2nd paragraph).

Rudder does not explicitly disclose the used of an identifier associated with the

multimodal preference information. Finke teaches a similar method of using a profile to

configure a communication apparatus (Col. 1 line 61 - Col. 2 line 12). The teachings of

Finke include the use of an identifier that is associated with both input and output

preference information (Col. 3 line 57 - Col. 4 line 12 and Col. 5 lines 3-67, also see Fig.

3). This allows a user to easily select a mode of operation associated with an identifier

based on the particular situation of the user (Col. 5 lines 63-67).

Rudder does not explicitly disclose the multimodal communication apparatus

configuration controller detects an ambient condition level associated with the

multimodal communication apparatus, compares the ambient condition level to the

ambient condition threshold data; and selects a multimodal input and output setting for the multimodal communication apparatus based on the comparison. Miyazawa teaches the use of ambient condition threshold data associated with operational settings (Col. 5 lines 8-49). Ambient threshold data is compared with a detected ambient condition level associated with the apparatus (Col. 12 line 62 - Col. 13 line 23). Selection of settings for the apparatus is based on the comparison (Col. 12 line 62 - Col. 13 line 23). This allows for improved interaction by, for example, making it easier to hear even when ambient noise is present (Col. 13 lines 18-22).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to take the system disclosed by Rudder modify it as indicated by Finke and Miyazawa such that the system further comprises an identifier associated with the multimodal preference information; and wherein the multimodal communication apparatus configuration controller detects an ambient condition level associated with the multimodal communication apparatus, compares the ambient condition level to the ambient condition threshold data; and selects a multimodal input and output setting for the multimodal communication apparatus based on the comparison. One would be motivated to incorporate the teachings of Finke, as there is need for facilitating a users adjustment of operating characteristics in order to get the best performance appropriate to a current situation (In Finke: Col. 1 lines 46-58 and Col. 5 lines 63-67). One would be motivated to incorporate the teachings of Miyazawa, as there is need for systems and methods that facilitate greater and more consistent user interaction (In Rudder: Page 5).

27.   With respect to Claim 16, Rudder teaches all the limitations of Claim 15 and

further teaches including memory, operatively coupled to the multimodal communication

apparatus, the memory containing received input and output modality preference data

and an associated identifier that has been associated with at least a pair of received

input and output modality preference data, as part of the multimodal profile (In Rudder:

Page 33, last paragraph; Page 34, starting at the 2nd paragraph to Page 35; Page 37,

last paragraph to Page 38 2nd paragraph) and (In Finke: Col. 5 lines 3-67).

28.   With respect to Claim 17, Rudder teaches all the limitations of Claim 16 and

further teaches including memory, operatively coupled to the multimodal network

element, the memory containing received input and output modality preference data and

an associated identifier that has been associated with at least a pair of received input

and output modality preference data, as part of the multimodal profile (In Rudder: Page

33, last paragraph; Page 34, starting at the 2nd paragraph to Page 35; Page 37, last

paragraph to Page 38 2nd paragraph) and (In Finke: Col. 5 lines 3-67).

29.   With respect to Claim 18, Rudder teaches all the limitations of Claim 16 and

further teaches a user interface, operatively coupled to the multimodal profile generator,

that receives input and output modality preference data to define differing multimodal

preference information for a plurality of multimodal communication scenarios (In

Rudder: Page 33, last paragraph; Page 34, starting at the 2nd paragraph to Page 35;

Page 37, last paragraph to Page 38 2nd paragraph) associated with a plurality of

identifiers (In Finke: Col. 5 lines 3-67).

30.   With respect to Claim 20, Rudder teaches all the limitations of Claim 15 and

further teaches wherein the multimodal profile is transferred between the multimodal

communication apparatus and the multimodal network element (In Rudder: Page 34,

starting at the 2nd paragraph to Page 35; Page 37, last paragraph to Page 38 2nd

paragraph).

Response to Arguments

31.   Applicant's arguments filed 9/30/2005 have been fully considered but they are

not persuasive.

32.   Applicant argues on pages 8-9 of the remarks - "*It appears that the Miyazawa
reference, at best, adjusts an output volume of a device when ambient noise is beyond
a desirable level. In contrast, Applicant claims, among other things, a multimodal
communication method that utilizes a multimodal profile and selecting a multimodal
input and output setting from the profile based on a comparison of a detected ambient
condition level and the ambient condition threshold data. Miyazawa does not select
multimodal input and output settings of a multimodal communication apparatus as
alleged in the office action. As such, the claim is in condition for allowance.*"

    a.   The examiner notes that claims 9, 14 and 19 were rejected under 35

U.S.C. §103(a) as unpatentable over Rudder in view of Finke and in further view

of Miyazawa. Applicant's arguments, however, are focused only on Miyazawa.

One cannot show nonobviousness by attacking references individually where the

rejections are based on combinations of references. See *In re Keller*, 642

F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.,* 800 F.2d 1091, 231

USPQ 375 (Fed. Cir. 1986).

b.   Furthermore, In re Keller, Terry, and Davies, 208 USPQ 871 (CCPA 1981) states, "Test of obviousness is not whether features of secondary reference may be bodily incorporated into primary reference's structure, nor whether claimed invention is expressly suggested in any one or all of references; rather, test is what combined teachings of references would have suggested to those of ordinary skill in art." The rejections of claims 9, 14 and 19 under §103(a) do not attempt to state that Miyazawa expressly suggests the entire claimed invention as applicant seems to be arguing. Instead, the rejections show that the claimed subject matter related to the comparison of ambient condition levels and ambient condition threshold data and selecting a multimodal input and output setting based on the comparison, would have been obvious to one of ordinary skill in the art when considering the combination of Rudder, Finke and Miyazawa.

c.   For these reasons, applicant's arguments are not persuasive.

Conclusion

33.   Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later
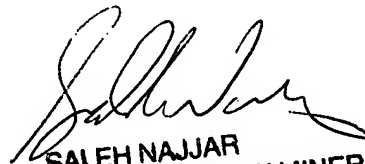
than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to David Lazaro whose telephone number is 571-272-

3986. The examiner can normally be reached on 8:30-5:00 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Saleh Najjar can be reached on 571-272-4006. The fax phone number for

the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see http://pair-direct.uspto.gov. Should

you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free).

David Lazaro
December 8, 2005

SALEH NAJJAR
SUPERVISORY PATENT EXAMINER